

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Low-Volume Long Distance Users	)	CC Docket No. 99-249 ✓
	)	
Federal-State Joint Board On Universal Service	)	CC Docket No. 96-45
	)	

### NOTICE OF PROPOSED RULEMAKING

**Adopted:** September 14, 1999

**Released:** September 15, 1999

NPRM Comment Date:      October 29, 1999  
NPRM Reply Date:        November 19, 1999

By the Commission:

### I. CALLS PROPOSAL

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on a proposal submitted by the Coalition for Affordable Local and Long Distance Services (CALLS)<sup>1</sup> to the Commission on July 29, 1999.<sup>2</sup> The CALLS Proposal is an interstate universal service and interstate access reform plan covering price cap incumbent local exchange carriers (LECs). It is designed to be implemented over a five-year period beginning in January 2000 and would apply to those carriers who voluntarily elect to participate.

2. The CALLS Proposal is an integrated proposal developed through negotiation among the LECs and interexchange carriers (IXCs) who make up the coalition. The CALLS members offer the proposal as a comprehensive solution to the membership's access charge,

<sup>1</sup> CALLS members are AT&T, Bell Atlantic, BellSouth, GTE, Sprint, and SBC.

<sup>2</sup> Letter from John Nakahata to Magalie Roman Salas, dated July 29, 1999. CALLS also submitted a memorandum in support of its July 29, 1999 (the "CALLS Proposal") presentation. See Letter from John Nakahata to Magalie Roman Salas, dated August 20, 1999 (CALLS Aug. 20, 1999 *ex parte*). Subsequently, CALLS discovered two technical errors in Appendices A and B attached to the CALLS Aug. 20, 1999 *ex parte*. CALLS submitted a filing correcting the technical errors. See Letter from John Nakahata to Magalie Roman Salas, dated September 13, 1999 (CALLS Sept. 13, 1999 *ex parte*).

universal service, and price cap concerns. First, the plan would revise the current system of common line charges by combining existing carrier and subscriber charges into one flat-rated subscriber line charge (SLC), and would provide for limited deaveraging of those charges under specific conditions.<sup>3</sup> Second, the plan would establish a portable universal service fund that provides explicit support to replace support currently implicit in interstate access charges.<sup>4</sup> Third, the plan would establish a "social compact" under which traffic-sensitive switched access rates are reduced annually until they reach an agreed level; once that level is reached, rates for all access elements are frozen until July 1, 2004.<sup>5</sup> CALLS asks that the plan be adopted by the Commission without modification as an integrated package, and implemented for the five-year period beginning in January 2000.<sup>6</sup> CALLS believes this plan will promote comparable and affordable universal service, reduce long distance bills, and promote competition in rural and residential markets.<sup>7</sup>

3. The specifics of the CALLS Proposal are set forth in the August 20, 1999 *ex parte* and its attachments. We incorporate those documents as part of this Notice, and provide the full text of each in the Appendices. Appendix A contains a complete description of the CALLS Proposal. Appendix B contains draft amendments to the Commission's rules.<sup>8</sup> Appendix C is a memorandum prepared by CALLS in support of its proposal.

4. Some of the issues addressed by the CALLS Proposal involve matters that are already the subject of pending Commission and court proceedings. Specifically, we sought comment in May, 1999 on the issue of how incumbent LECs should reduce interstate access rates in order to reflect any increased high cost universal service support that they receive.<sup>9</sup> We note that the state members of the Federal-State Joint Board on Universal Service (State Members) submitted comments in response to that notice recommending an approach that differs in critical respects from the CALLS Proposal.<sup>10</sup> The State Members would have the Commission reduce or eliminate the SLC as a means of complying with section 254(k) of the

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<sup>3</sup> CALLS Aug. 20, 1999 *ex parte* at 10-21.

<sup>4</sup> *Id.* at 21-32.

<sup>5</sup> *Id.* at 32-40.

<sup>6</sup> *Id.* at 1.

<sup>7</sup> *Id.*

<sup>8</sup> Appendices A and B reflect the technical corrections submitted in the CALLS Sept. 13, 1999 *ex parte*.

<sup>9</sup> Federal-State Joint Board on Universal Service, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, and Access Charge Reform, Fourth Report and Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking, FCC No. 99-119, ¶¶ 123-35 (rel. May 28, 1999) (*High Cost Universal Service FNPRM*).

<sup>10</sup> State Members Comments on *High Cost Universal Service FNPRM*.

Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996.<sup>11</sup> They suggest combining all federal common line charges into a single flat charge assessed upon IXCs. In July 1999, we began an inquiry into the effects of flat-rate charges on single-line residential and business customers who make few, or no, interstate long distance calls.<sup>12</sup> In August 1999, we issued a Further Notice of Proposed Rulemaking in *Access Charge Reform* proceeding that, *inter alia*, sought comment on restructuring the recovery mechanism in the traffic-sensitive basket for price cap companies, as well as changing the price cap formula for the traffic-sensitive basket.<sup>13</sup> In addition, the United States Court of Appeals for the District of Columbia Circuit recently remanded to the Commission portions of the May 1997 order setting the X-factor in the price cap formula at 6.5 percent. We are currently considering issues raised by the court's remand and intend to seek comment on these issues in a future proceeding. That forthcoming NPRM may likely contain proposals that are different from those in the CALLS Proposal.

5. We seek comment on whether we should adopt the CALLS Proposal in its entirety, as requested by the CALLS members. We also seek comment on whether, in the event we do not adopt the proposal, there are any aspects of the proposal that we should incorporate into any of our concurrent proceedings. We also invite commenting parties to propose alternative plans to that submitted by CALLS.

## II. PROCEDURAL MATTERS AND ORDERING CLAUSES

### A. *Ex Parte* Presentations

6. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission rules.<sup>14</sup>

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<sup>11</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.* (1996 Act). See 47 U.S.C. § 254(k).

<sup>12</sup> Low-Volume Long-Distance Users, CC Docket No. 99-249, Notice of Inquiry, FCC 99-168 (rel. July 20, 1999).

<sup>13</sup> Access Charge Reform, CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, FCC 99-206, ¶¶ 207-225 (rel. Aug. 27, 1999).

<sup>14</sup> See generally 47 C.F.R. §§ 1.1201, 1.1203, 1.1206.

**B. Initial Regulatory Flexibility Act**

7. As required by the Regulatory Flexibility Act (RFA),<sup>15</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IFRA) of the possible significant economic impact on small entities by the proposals in the this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on the IFRA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this NPRM, and should have a separate and distinct heading designating them as responses to the IFRA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA.<sup>16</sup>

8. Legal Basis. This rulemaking action is supported by sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201-205, 254, and 403.

9. Description and Estimate of the Number of Small Entities to which the Notice will Apply. The RFA generally defines the term "small entity" as having the same meaning as the term "small business". In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its actives.<sup>17</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration. The Small Business Administration has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity that has no more than 1500 employees.<sup>18</sup>

Total Number of Telephone Companies Affected.

10. *Price Cap Local Exchange Carriers.* This rulemaking applies only to price cap LECs. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of price cap LECs that would qualify as small business concerns under the SBA's definition. However, there are only 13 price cap LECs. Consequently, we estimate that

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<sup>15</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>16</sup> See 5 U.S.C. § 603(a).

<sup>17</sup> See 5 U.S.C. § 601 (3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

<sup>18</sup> 13 C.F.R. § 121.201.

significantly fewer than 13 providers of local exchange service are small entities or small price cap LECs that may be affected by these proposals. Although, we have included small price cap LECs in this RFA analysis, we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts. In particular, our treatment here of small price cap LECs as "non-dominant" for SBA size standards has no effect on our determinations of "dominance" in other, common carrier, contexts.

### **C. Deadlines and Instructions for Filing Comments**

11. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before October 29, 1999 and reply comments on or before November 19, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

12. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554.

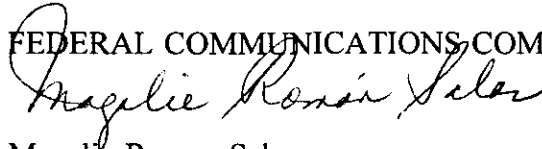
13. Parties must also send three paper copies of their filing to Wanda Harris, Competitive Pricing Division, 445 Twelfth Street S.W., Fifth Floor, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

### **D. Ordering Clauses**

14. IT IS ORDERED, pursuant to Sections 1, 4(i) and (j), 201-209, 218-222, 254, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154 (i), 154(j), 201-209, 218-222, 254, and 403 that this Notice of Proposed Rulemaking IS HEREBY ADOPTED and comments ARE REQUESTED as described above.

15. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs Reference Operations Division, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary